

REMARKS/ARGUMENTS

Applicants thank Examiner Radio for the telephonic interviews held in this case as well as in related U.S. Patent Application 09/526,855. During these interviews, a number of issues have been discussed and a number of claim amendments have been proposed that have allowed Applicants to address more fully the concerns of the Examiner. Applicants thank Examiner Radio for her time.

With entry of this Amendment, claims 1-36 are pending in the above-referenced patent application; claims 1, 2, 4-7, 15-19, 26 and 27 are currently under examination, and claims 3, 8-14, 20-25 and 28-36 have been withdrawn from consideration as being directed to non-elected species. In accordance with the Examiner's suggestion, the definition of the R¹ substituent in claim 1 has been amended, without prejudice or disclaimer, to recite only nitrogen-containing substituents. As amended, the definitions of R¹ in claim 1 recites: "R¹ is a member selected from the group consisting of -N(CH₃)₂ and -NHCH₃." Support for the amendment to claim 1 is found in the specification and claims as originally filed and, thus, no new matter has been introduced. Applicants expressly reserve the right to pursue the cancelled subject matter in a related case at a later date.

Reconsideration of the application is respectfully requested in view of the above amendment to claim 1 and the following remarks.

I. Provisional Obviousness-Type Double Patenting Rejection

The Examiner has provisionally rejected claims 1, 2, 4-7, 15-19, 26 and 27 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims of copending U.S. Patent Application No. 09/526,855.

As noted by the Examiner in the Office Action, upon notification that allowable subject matter is present in the instant application, Applicants will file the appropriate Terminal Disclaimer under 37 CFR § 1.321(c) to overcome the rejection.

II. Rejection Under 35 U.S.C. § 103(a) Over Torelli et al.

Claims 1, 2, 4-7, 15-18, 26 and 27 stand rejected under 35 U.S.C. § 103(a) over Torelli *et al.* (U.S. Patent No. 4,634,695). In support of this rejection, the Office Action generally alleges that the unexpected results presented by the Kim declaration are insufficient because they are not commensurate in scope with the claimed invention (*see*, page 3 of the Office Action).

As explained above, in order to expedite prosecution and in accordance with the Examiner's suggestion, the definition of the R¹ substituent in claim 1 has been amended, without prejudice or disclaimer, to recite only nitrogen-containing substituents. As amended, the definitions of R¹ in claim 1 recites: "R¹ is a member selected from the group consisting of -N(CH₃)₂ and -NHCH₃." In view of the amendment to claim 1, Applicants respectfully submit that the unexpected results and data provided in Dr. Kim's declaration, together with the data provided in the specification (*see, e.g.*, Table 1 on page 50 of the specification), is commensurate in scope with the claimed invention. This issue was discussed with Examiner Badio during the telephonic interviews, and she agreed that the amendment to claim 1 would overcome the rejection based on Torelli *et al.* and put the claims in condition for allowance. Accordingly, in view of the amendment to claim 1, Applicants respectfully request the Examiner to withdraw this § 103 rejection.

Appl. No. 09/180,132
Amdt. dated July 12, 2004
Reply to Office Action of June 10, 2003

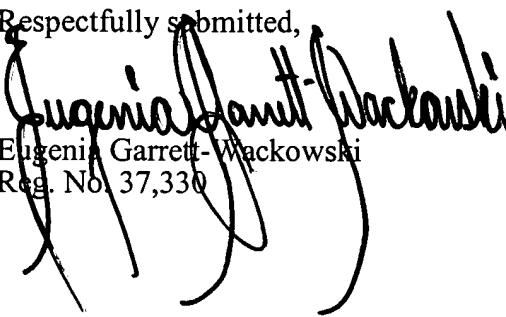
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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,


Eugenia Garrett-Wackowski
Reg. No. 37,330

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 925-472-5000
Fax: 415-576-0300
Attachments
EGW:lls
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